

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES

-v-

LEONIDES SIERRA et al.,

Defendants.

S5 11 Cr. 1032 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

Pretrial conferences were held this week (on July 9 and July 12, 2013) for the defendants previously designated as the “Murder Defendants.” At those conferences, the Court raised with counsel two issues relating to scheduling: (1) the timetable on which mitigation submissions by defendants potentially facing capital punishment who have not yet made such submissions are to be made to the United States Attorney; and (2) the identity of the Murder Defendants to be tried first, and on what schedule. This Order addresses those issues.

Mitigation Submissions

Counsel for two defendants (Carlos Urena and Juan Franco) have made mitigation submissions to the United States Attorney, and counsel for a third (Limet Vasquez) has chosen to forego the opportunity to make such a submission. The Government’s recommendations as to these defendants were submitted to the Capital Case Unit (CCU) of the Justice Department this week, and the Government expects a decision from the Attorney General of the United States within approximately 90 days, *i.e.*, in mid-October. No other defendant who has been arraigned in this case and potentially faces capital punishment has made a mitigation submission.<sup>1</sup>

<sup>1</sup> The Government estimates that there are 10 or 11 such defendants.

At this week's hearings, a number of defense counsel asked that the Court set, as the outside deadline for mitigation submissions, February 1, 2014. No defendant sought a later deadline. The Government did not object to this request. The Court will accordingly set February 3, 2014—February 1, 2014 being a Saturday—as the deadline for defendants to make a mitigation submission to the Government.

At the same time, the Court is mindful that a defendant who makes such a submission on February 3, 2014 realistically cannot expect a decision from the Attorney General until, at the earliest, June 2014.<sup>2</sup> A trial first scheduled in June 2014 might not be held until late 2014 or later. The Court wishes to assure itself that any defendant whose counsel elects to make a mitigation submission on that schedule does so with full awareness of the consequences for a trial date. The Court therefore directs that counsel for any defendant who wishes to reserve the right to make a mitigation submission after November 1, 2013, submit by that date a sworn declaration attesting that his or her client is aware of the potential impact on the trial schedule of making a mitigation submission after that date and approves of the decision to do so.

The Court also asks that each counsel who intends to make a mitigation submission give the Government as much notice as possible that such a submission is forthcoming. Doing so may help the Government expedite the process by which it makes a recommendation to the CCU as to that defendant.

#### Scheduling of Trial

At this week's conference, the Court expressed an intention to set a date for the first of the trials to be held among the Murder Defendants. Doing so respects the interest of the defendants in a speedy trial. This case was originally indicted in December 2011. Many Murder

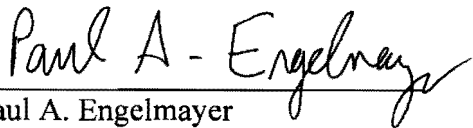
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<sup>2</sup> This assumes one month for the United States Attorney to make its recommendation and three months for the Attorney General to decide.

Defendants have been held in custody since then. Others have been held since their arrests based on the superseding indictment returned in December 2012. It is likely that multiple trials will be needed to resolve the charges against the Murder Defendants, particularly given the Court's commitment to try no more than approximately five defendants at one time. Commencing trials within this group of defendants sooner rather than later helps expedite the last trial in this case. Setting a first trial date soon also facilitates counsel's scheduling. Finally, although most defendants have not requested that the Court set a trial date as to them, counsel for four (Juan Franco, Maria Mejia, Carlos Urena, and Limet Vasquez) have now asked that a trial date or dates be set as to them.

The Court accordingly directs that the Government submit a letter, by Friday, July 19, 2013, setting out its views as to which group of the Murder Defendants should be tried first, and why. The Court would welcome the Government's identifying as many viable options for an early trial as possible, and the approximate length of each such trial, as well as the Government's preliminary views as to the logical sequencing of trials as among the Murder Defendants. The Court authorizes defense counsel to submit, by Friday, July 26, 2013, a letter or letters with their views; each such letter should identify the defendants on whose behalf the letter is written. The Court authorizes the Government, by Wednesday, July 31, 2013, to submit a letter in reply.

SO ORDERED.

  
Paul A. Engelmayer  
United States District Judge

Dated: July 12, 2013  
New York, New York